

JURISDICTIONAL DETERMINATION

DISTRICT OFFICE: Walla Walla District (CENWW)

FILE NUMBER: NWW No. 042100139

PROJECT LOCATION INFORMATION:

State: Idaho
County: Ada
Center coordinates of site (UTM): Zone:11 North:4835910 East:550924
Approximate size of area (parcel) reviewed, including uplands: 100 acres
Name of nearest waterway: Boise River and adjacent wetlands
Name of watershed: Boise River Watershed

JURISDICTIONAL DETERMINATION

Completed: Desktop determination ☐ Date:
Site visit(s) ☒ Date(s): September 8, 2004

Jurisdictional Determination (JD):

- ☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable. (Reference 33 CFR part 331).
- ☒ Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).
- Check all that apply:

- ☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- ☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- ☒ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
- ☒ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction

Basis of Jurisdictional Determination:

A. Waters defined under 33CFR part 329 as "navigable waters of the United States":

- ☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

- ☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands¹
- ☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters defined as a Water of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) – (4) above.
- ☐ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).

Unnamed drainage ditches flow into the South Channel of the Boise River, that flows to the Snake River, an interstate, navigable, category 1 water. The Snake River supports interstate commercial boat traffic and interstate recreational boating, fishing and hunting.

Unnamed drainage ditches and or wetland swales D,F,G,T,U,V, W1 and W2 (total 2.73 acres) are surface water drains/wetland swales that flow into the south channel of the Boise River and are therefore tributary to the Boise River.

Wetland sites J,K,L,M,Q,S1,S6 and Y are wetlands adjacent to the south channel Boise River and have a direct hydrologic connection, i.e., over bank flooding at normal high water or underground hydraulic connection i.e., subwater during normal high water (Review of 1996 aerial photo's). These wetlands have been delineated using the 1987 Corps of Engineers wetland delineation manual and total 11.15 acres. All wetlands have been confirmed as meeting the parameters for being jurisdictional wetlands.

Man-made open water Areas A1,A2, A3, A4, A5 and R, and wetland areas E, H, S2,S3,S4,S5 and X are open water or wetlands that are isolated with no apparent surface water connection to any other water of the United States. In addition, these open water ponds or wetlands are not boatable and are not open to the general public for use. The isolated open water ponds and wetlands total 1.41 acre. Based on *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), where the United States Supreme Court held that isolated, non-navigable, intrastate waters are not jurisdictional under the Clean Water Act (CWA) if the sole interstate commerce nexus is the use of such waters by migratory birds, is not subject to Clean Water Act jurisdiction.

Lateral Extent of Jurisdiction: (Reference: 33 CFR 328 and 329)

- | | |
|---|--|
| <input checked="" type="checkbox"/> Ordinary High Water Mark indicated by: | <input type="checkbox"/> High Tide Line indicated by: |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects |
| <input type="checkbox"/> the presence of litter and debris | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> physical markings/characteristics |
| <input type="checkbox"/> destruction of terrestrial vegetation | <input type="checkbox"/> tidal gages |
| <input type="checkbox"/> shelving | <input type="checkbox"/> other: _____ |
| <input type="checkbox"/> other: _____ | |
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types
- ☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a jurisdictional report prepared by: _Resource Systems, Inc, dated September 7, 2004.

Basis For Not Asserting Jurisdiction:

- ☐ The reviewed area consists entirely of uplands.
- ☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1,2, or 4-7).
- ☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☐ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - ☒ Isolated, intrastate wetland with no nexus to interstate commerce.
 - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
 - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:

☐ Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant.
 - ☒ This office concurs with the delineation report, dated September 7, 2004, prepared by Resources Systems Inc.:
 - ☐ This office does not concur with the delineation report, dated _____, prepared by (company):
- ☐ Data sheets prepared by the Corps.
- ☐ Corps' navigable waters' studies:
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☐ U.S. Geological Survey 7.5 Minute Topographic maps:
- ☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☐ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☐ USDA Natural Resources Conservation Service Soil Survey:
- ☐ National wetlands inventory maps:
- ☐ State/Local wetland inventory maps:
- ☐ FEMA/FIRM maps (Map Name & Date):
- ☐ 100-year Floodplain Elevation is: _____ (NGVD)
- ☒ Aerial Photographs (Name & Date): February 1996
- ☐ Other photographs (Date):
- ☐ Advanced Identification Wetland maps:
- ☐ Site visit/determination conducted on: September 7, 2004
- ☐ Applicable/supporting case law:
- ☐ Other information (please specify):

Preparer: Greg Martinez

Date: October 15, 2004

¹. Wetlands identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

². The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.